IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMIE DiGIROLAMO,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 02-656
JILLIAN'S ENTERTAINMENT CORP., JILLIAN'S OF FRANKLIN, PA., INC., WILLIAM J. O'BRIEN, III, M.D., and KEVIN JONES,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. MARCH 19, 2002

Presently before this Court is the Motion by the Defendant, William J. O'Brien, III, M.D. ("O'Brien"), to Remand. O'Brien filed this Motion in response to the Defendants', Jillian's Entertainment Corp. and Jillian's of Franklin, Pa., Inc. (collectively "Jillian's"), attempt to remove this case from state court to this Court without O'Brien's consent. For the reasons that follow, the Motion will be granted.

I. FACTS

The Plaintiff Jamie DiGirolamo ("DiGirolamo") alleges that on January 20, 2000, she was sexually assaulted by O'Brien and Kevin Jones ("Jones") while working as a cocktail server for their private party in Jillian's private billiards room at Jillian's restaurant and bar in Philadelphia. DiGirolamo claims that she immediately told Jillian's management about the incident and that Jillian's failed to take immediate corrective action to redress the problem and not only allowed O'Brien and Jones to stay, but allowed them to return to Jillian's on other

occasions.

On January 18, 2002, DiGirolamo filed the present lawsuit in the Court of Common Pleas of Philadelphia County. The Complaint alleges: (1) state law claims for assault, battery, and intentional infliction of emotional distress ("state law claims") against O'Brien and Jones; and (2) sexual harassment claims in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII") and the Pennsylvania Humans Relations Act against Jillian's. Jillian's filed a Notice of Removal to this Court on February 8, 2002 pursuant to 28 U.S.C. § 1441(c) without O'Brien's consent.

II. DISCUSSION

Generally, all defendants must consent to the removal of a case from state court to federal court. Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995). However, under 28 U.S.C. § 1441(c), consent need not be obtained from a defendant who is facing only non-removable claims which are "separate and independent" from any removable claims set forth against another defendant. Landman v. Borough of Bristol, 896 F. Supp. 406, 409 n. 2 (E.D. Pa. 1995). Removal statutes are to be strictly construed against removal and all doubts should be resolved in favor of remand. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990); Apoian v. Am. Home Prods. Corp., 108 F. Supp.2d 454, 456 (E.D. Pa. 2000). Furthermore, Jillian's, the party seeking federal jurisdiction, bears the burden of proof on this issue. Chase v. N. Am. Sys., Inc., 523 F. Supp. 378, 380 (E.D. Pa. 1981). In this case, O'Brien has not consented to removal. However, Jillian's argues that the Title VII claim is "separate and independent" from the state law claims alleged against O'Brien and Jones, and therefore, O'Brien's consent to removal is not required.

The Third Circuit stated that "where there is a single injury to plaintiff for which relief is sought, arising from an interrelated series of events or transactions, there is no separate or independent claim or cause of action under § 1441(c)." Borough of W. Millfin v. Lancaster, 45 F.3d 780, 786 (3d. Cir. 1995)(citing Am. Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951)). Furthermore, "[s]uits involving pendant (now 'supplemental') state claims that 'derive from a common nucleus of operative fact' do not fall within the scope of § 1441(c) since pendant claims are not 'separate and independent.'" Id. (citations omitted). It is well known that the United States Supreme Court decision in Finn, 341 U.S. 6, severely limited the availability of removal under § 1441(c). Stroker v. Rubin, No. 94-5563, 1994 WL 719694, * 4 (E.D. Pa. Dec. 22, 1994); Knowles v. Am. Tempering Inc., 629 F. Supp. 832, 836 (E.D. Pa. 1985); Essington Metal Works Inc. v. Ret. Plans of Am., Inc., 609 F. Supp. 1546, 1553 (E.D. Pa. 1985). After Finn, claims are "separate and independent" only when they involve "completely different questions of fact and substantially different questions of law." Stroker, 1994 WL 719694 at * 4 (internal quotations omitted); Knowles, 629 F. Supp. at 836. "'[S]eparate and independent' connotes an entirely distinct controversy; one that differs from and is not dependant upon the main cause of action." Chase, 523 F. Supp. at 382.

Here, all of the claims arise out of the sexual assault allegedly committed by O'Brien and Jones. All of the claims arise from a common nucleus of operative fact, see Borough of West Millfin, 45 F.3d at 786, and it is readily apparent that the claims do not rely on completely different questions of fact. See Knowles, 629 F. Supp. at 836. "Claims are not 'separate and independent' simply because the petition contains separate prayers for relief; multiple theories of recovery; separate counts; claims with different requirements of proof; or

allegations of joint, several or joint and several liability." Village Imp. Ass'n of Doylestown, Pa. v. Dow Chem. Co., 655 F. Supp. 311, 316 (E.D. Pa. 1987). Moreover, the Complaint sets forth a common chronology of factual allegations from which the various Counts are drawn without limitation, supplementation or exclusion. The Title VII claim is not "separate and independent" from the state law claims as all of the claims are based upon a series of interlocking events which took place at Jillian's, and thus, removal to this Court without O'Brien's consent is improper. Therefore, this case must be remanded to the state court.

An appropriate Order follows.

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ORDER

AND NOW, this 19th day of March, 2002, upon consideration of the Motion to Remand filed by the Defendant William J. O'Brien, III, M.D. (Dkt. No. 5), and the Defendants Jillian's Entertainment Corp. and Jillian's of Franklin, Pa., Inc. Response thereto, it is hereby ORDERED that the Motion is GRANTED and the case shall be Remanded.

BY THE COURT:

ROBERT F. KELLY, Sr. J.